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of all Forms of
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-first session

SUMMARY RECORD OF THE 1236th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 August 1997, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Sixth to eleventh periodic reports of Burkina Faso (CERD/C/279/Add.2; HRI/CORE/1/Add.30)

1. At the invitation of the Chairman, Mr. Somda, Mrs. Zanga and Mr. Kam (Burkina Faso) took places at the Committee table.

2. Mr. SOMDA said the reason that so much time had elapsed since, in 1984, Burkina Faso had presented its previous periodic report on the implementation of the Convention was the state of emergency and, more generally, the development problems the country had faced since gaining independence in 1960. The upshot of the first three republics and the state of emergency had not been positive; in 1989, however, the authorities had begun a slow but irresistible advance towards the establishment of a democratic State ruled by law, as the inhabitants of the country wanted. The process had culminated in the adoption of the Constitution of 2 June 1991, the presidential election on 1 December 1991 and the legislative elections on 24 May 1992, which had given birth to the Fourth Republic. Once the institutional foundations had been laid, Burkina Faso had applied itself to buttressing the democratic process in order to ensure that it advanced in a setting that favoured the promotion and protection of human rights, taking as its starting point the principle that respect for human rights was essential to development. Efforts to promote human rights and, especially, eliminate of all forms of racial discrimination were now in full swing.

3. As regards population, the demographic composition of Burkina Faso had changed very little. The information appearing in the 1985 report remained valid except the fact that the country now had 10,373,651 inhabitants. The "joking" relatives system was an efficient social device that helped to ease tensions and imbalances between different ethnic groups.

4. To promote national languages, the Government had embarked on a programme which included literacy training for population groups and broadcasts in local languages. Satellite schools and informal education centres had been set up to provide primary education in national languages, and there were plans to increase broadcast television programming in national languages other than the three main ones.

5. As part of its move towards decentralization, which it regarded as a means of promoting and developing grass-roots democracy, the Government had restructured the country, formerly divided into 45 provinces, into 33 fully-fledged communities. A number of laws had been passed setting up a legal framework and institutions. For example, an act of 1993 allocated resources among the various geographical communities according to demographic, economic and political criteria.

6. Following the 1997 legislative elections, in which 13 political parties had taken part, the ruling party, the Congress for Democracy and Progress, had won 101 parliamentary seats; three other political groupings had together won nine.

7. Under Act No. 002/97/ADP dated 27 January 1997, amending the Constitution, all international human rights instruments ratified by Burkina Faso were in force in the country and served as a starting point for the executive and legislature to pass laws on human rights questions. Article 5 of the Penal Code stated that the international instruments concerned could be invoked before the courts and took precedence of domestic legislation. By contrast, bilateral treaties could be invoked only if reciprocal arrangements were in force.

8. Act No. 10/90/ADP/1992, on freedom of association, allowed associations to be formed freely, but discriminatory associations were nevertheless banned. The Framework Law on Education (No. 103/96/ADP) stipulated that every citizen had a right to education without discrimination based on sex, social origins or religion. Under Act No. 43/96/ADP of 30 November 1996, any act of racial discrimination was a penal offence punishable by imprisonment and banishment; the definition of racial discrimination used was that given in article 1 of the Convention.

9. As regards the judiciary, a number of laws had been passed to re-establish its authority and the independence of the courts and magistrates, and to provide remedies for those brought to justice. The new Penal Code (Act dated 30 November 1996) modified the country's penal provisions to suit the current socio-economic situation in Burkina Faso.

10. Updating the information given in paragraphs 17 to 21 of the previous periodic report, he said that the penal law of 31 August 1959 had been superseded by an act of 30 November 1996 which raised the fines imposable on those guilty of the crimes defined in paragraph 17 to a minimum of 50,000 and a maximum of 300,000 CFA francs. The acts referred to in paragraph 19 were now punishable by between 5 and 10 years' imprisonment if the guilty party was an ordinary citizen, or 10 to 20 years' imprisonment in the case of a minister. The punishment for judges and magistrates laid down in paragraph 20 was between 1 and 5 years' imprisonment. The law now provided that judges must dispense justice, on pain of a fine of between 50,000 and 300,000 CFA francs. Administrative or judicial police officials who, being aware of any case of illegal or arbitrary detention, wherever it might be, declined to put an end to it (para. 21) would be sentenced to terms of detention and financial penalties. The fine for officials at places of detention who admitted prisoners without a warrant or judicial decision had been raised to a minimum of 50,000 and a maximum of 600,000 CFA francs.

11. As regards administrative measures, the Ombudsman established by the organizational act dated 17 May 1994 could act with complete independence within his terms of reference. Paragraph 22 of the report needed correction: the Ombudsman received complaints concerning the administrative functioning of the State, the geographical communities, public institutions and any other bodies rendering a public service. In practice, the Ombudsman had been impelled to intervene in social conflicts.

12. The Government encouraged the activities of non-governmental organizations concerned with human rights, and the creation of administrative bodies bringing together representatives of the administration, non-governmental organizations and public organizations in order to protect and promote human rights. In 1993 it had set up a national committee to combat discrimination in all its forms, and another to apply the Beijing recommendations. It had also launched an operation known as "One thousand girls" to provide girls with an education and some modest resources for embarking on income-generating handicraft activities. It had taken steps to reduce the imbalance between school attendance rates for boys and girls, in part by setting up a service under the Ministry of Mass Literacy and Basic Education to promote female education. The service had set a quota of 50 per cent for girls and boys attending primary schooling establishments in the 11 provinces where female school enrolment rates were particularly low, and provided those concerned with school supplies and additional food rations.

13. Despite difficult conditions, the human rights situation was developing favourably in Burkina Faso, where rights were protected not only by the State, under the Constitution and legislation, but also by non-governmental organizations and human rights organizations. The assertion of human rights was a long-term undertaking: if it was to succeed, anything that might heighten tension or confrontation between communities must be avoided. As a result, such activities were immediately suppressed. Burkina Faso counted on its partners in development, non-governmental organizations, human rights institutions and the international community to help it tackle its development problems which were the principal obstacles to the attainment of its human rights goals.

14. Mr. DIACONU (Country Rapporteur) hailed the resumption of dialogue with Burkina Faso, the "country of honest people", whose fifth report had been considered in 1985 and whose core document had been submitted in 1993. He was pleased that so large a delegation had come to introduce a report from a country with no diplomatic mission in Geneva: it indicated the country's desire for dialogue with the Committee and the importance it attached to implementation of the Convention. Another indication of that desire came in the fact that Burkina Faso had replied to the written questions sent it. He thanked Mrs. Konate, the Ambassador of Burkina Faso to Denmark, who had made available to him every document on Burkina Faso she had been able to assemble.

15. Burkina Faso was undergoing changes similar to those that had taken place almost everywhere in Africa during the 1990s. Under the 1991 Constitution, racial discrimination of any kind, particularly based on race, ethnicity, region, colour, sex, language, religion, caste, political opinion, wealth and birth, was prohibited. The Constitution was based on a pluralist concept; 13 political groups had taken part in the legislative elections in May 1997, and 4 political parties were represented in the new Parliament. Given that there had been seven political parties represented in the former Government, formed after the 1993 elections, he would like to know whether more than one party was represented in the current Government.

16. Burkinabe legislation showed that the country had a clear policy of developing human rights to the benefit of the entire population, as indicated by a determination to combat all forms of discrimination including racial

discrimination. In order to be able to assess the implementation of the Convention, however, the Committee would like more up-to-date and extensive information on the ethnic composition of the population. The 1983 report stated that the population was composed of 68 per cent animists and 27.5 per cent Muslims. The report now under consideration said that the population comprised 53 per cent Muslims and 26 per cent animists. Could the delegation explain the reason for that reversal in the percentages?

17. The report contained no information on article 3 of the Convention. As for article 4, the information provided orally by the Burkina Faso delegation, namely that the Act dated 13 November 1996 amending the Penal Code made any act of racial discrimination a penal offence, was of considerable importance. It was to be noted that the definition of racial discrimination used in the country's legislation was identical to that used in article 1 of the Convention. The delegation should tell the Committee whether the 1959 laws permitting the Council of Ministers to dissolve associations that fomented racial, regional or religious hatred were still in effect. Since regionally and tribally based organizations were banned, he wondered whether, among the four parties represented in the Parliament and the parties that had taken part in the elections, there were any with a majority of members from the same region. He would also like to know in what sense the terms "regionalism" and "tribalism" were used, and whether there was a link between those concepts and racial discrimination. In the fullness of time, he believed, the Committee might advise Burkina Faso to revise its domestic legislation in order to give full effect to article 4 of the Convention banning organizations that spread racist propaganda or incited racial violence.

18. A number of non-governmental organizations had reported expulsions of Cameroonian and Chadian students with refugee status from Burkina Faso; he asked the delegation to provide information on those matters.

19. As regards article 5, he pointed out that, according to the report, a number of articles in the Constitution prohibited discrimination based on colour, religion, social origins, ethnic group or political opinions in various areas. Article 19 prohibited any discrimination in employment and remuneration based on such grounds, and article 23 likewise banned discrimination in marriage. Act No. 13 prohibited such discrimination in education. It would be helpful to the Committee to know whether there were provisions banning racial discrimination in other areas covered by article 5, and what steps Burkina Faso was taking to give effect to them. Why was there such a disproportion between the resources voted in the 1997 budget to three regions - the centre, Boucles de Mouhoun and Hauts-Bassins - and the populations of the regions concerned? The report provided no information on how different ethnic groups participated in the political life of the country or how they were represented in Parliament and the Government. Could the delegation provide information on those matters?

20. He would like to know whether use had been made of the legal remedies against decisions by the authorities mentioned in paragraphs 13 to 23 of the current report.

21. Noting with satisfaction that the Government's seven-year programme called for the promotion of a rich, dynamic culture based on exchanges among

communities, he asked whether the Government was equally determined to foster a spirit of tolerance, friendship and respect among ethnic groups in schools and in society, and if there were cultural associations engaging nationally in activities to that end. One of the resolutions adopted during the National Colloquium on Basic Education held in Burkina Faso in 1993 called for action to promote the use, in particular in writing, of national languages other than French and their use on radio and television. That was an initiative to be applauded.

22. Framework legislation and laws on decentralization had been passed in 1993, setting up autonomous administrative structures at the local level. Such moves should be encouraged. As regards the Mediator established in 1994, he would like information on what the Mediator had set out to do and what he had accomplished. Lastly, he noted with satisfaction that under article 151 of the Constitution, international instruments ratified by Burkina Faso, including the Convention, took precedence of domestic legislation.

23. Mr. VALENCIA RODRIGUEZ noted with satisfaction that the principles set forth in the Convention were the subject of broadcasts and televised debate in Burkina Faso, that efforts were being made to develop local-level administration, and that the country was making progress towards democracy by emphasizing respect for human rights. He hoped that Burkina Faso would continue in that direction. He welcomed the fact that the first article of the Constitution prohibited discrimination in any form and that article 18 of the Constitution acknowledged that education, instruction, training, work, social security, housing and health were social and cultural rights. He also noted that the Convention took precedence of national laws and regulations, and asked for information on any cases in which the Convention had been directly invoked before the courts.

24. He had taken note of the information on how the justice system functioned and the powers of the judiciary as regards respect for and the promotion of human rights. He hailed the fact that the Mediator was an independent official, and asked for additional information on what the Mediator did in matters of relevance to the Convention. Lastly, he expressed the hope that the Government would in its next report follow the Committee's guidelines on the format and content of reports.

25. Mr. de GOUTTES hailed the resumption of dialogue between Burkina Faso and the Committee, but commented that the report under consideration was too general and of greater interest to the Human Rights Committee than the Committee on the Elimination of Racial Discrimination. Referring to article 13 of the Constitution, which prohibited tribalist, regionalist, denominational or racist political parties or groupings, he asked whether the ban also extended to parties based on ethnic exclusiveness.

26. He would like to see a summary of the activities of the Mediator, insofar as that was possible, and wondered whether there were plans to establish a national human rights committee in Burkina Faso.

27. As regards the application of article 4 of the Convention, he enjoined the Government to provide in its next report the text of the revised Criminal Code that made any act of racism a criminal offence. He would also like statistics on complaints lodged, prosecutions brought and judgements handed down in connection with acts of racism.

28. Mrs. SADIQ ALI wanted to know how many exiles had returned to Burkina Faso under the policy of national reconciliation. On 24 December 1991, 4,000 people previously convicted for political or trade union activities had been rehabilitated: that was commendable. In July 1994, Burkina Faso and Mali had reached agreement on the repatriation of Malians in Burkina Faso. She would like more information on that subject.

29. What steps had the Government taken to encourage the written use of native languages such as Mossi and make them more accessible? She would like information on the activities of the Mouvement pour les droits de l'homme et les droits des peuples, a local non-governmental organization. Last, she called for more extensive information on the application of article 7 of the Convention.

30. Mrs. ZOU noted with satisfaction that in recent years the Government had taken a number of steps to promote human rights. She was sorry that the most recent report was less extensive than the one submitted in 1984, and that the Committee's guidelines on the form and content of reports had not been followed.

31. She would like to know more about the relations between the various ethnic groups living in Burkina Faso. What policy did the Government pursue? She noted with satisfaction that the Act of 13 November 1996 punished acts of racial discrimination, and asked for more details of what the Act said. Had anybody been sentenced under it? She would like to know the status of languages other than French in the education system. She also asked for more information on unemployment levels among the various ethnic groups. Lastly, in reference to the steps to promote the status of women mentioned in the report, she asked what the marriageable age in Burkina Faso was.

32. Mr. AHMADU emphasized that Burkina Faso was one of the rare countries in Africa where the rights set forth in article 4 of the Convention were guaranteed. What was more, Burkina Faso had taken steps to eliminate discrimination against ethnic groups and minorities. He would like to know the position of the Mossi king on the Convention, and what had resulted from the meeting between politicians from a number of countries in the region on the situation of Touareg exiles.

33. He pointed out that the report was not laid out according to the Committee's guidelines. The Government might like to seek secretariat assistance with its next report.

34. The CHAIRMAN invited the delegation of Burkina Faso to reply to the Committee's questions at the following meeting.

35. The delegation of Burkina Faso withdrew.

Draft concluding observations of the Committee on the thirteenth and fourteenth periodic reports of Poland (distributed at the meeting, in English only: CERD/C/51/Misc.18 - future CERD/C/304/Add.36 - future CERD/51/CRP.1/Add.15) (continued)

36. The CHAIRMAN invited the Committee to resume consideration of its draft concluding observations on Poland.

Paragraph 9

37. Mr. GARVALOV asked whether it was to be understood that in theory the International Convention on the Elimination of All Forms of Racial Discrimination applied directly under Polish domestic law.

38. Mr. SHAHI confirmed that that was so.

39. Paragraph 9 was adopted.

Paragraph 10

40. Paragraph 10 was adopted.

Paragraph 11

41. The CHAIRMAN drew attention to a typing error in the first line, which should read "... to declare illegal and to prohibit ...".

42. Paragraph 11 was adopted subject to the drafting change.

43. Mr. ABOUL-NASR asked whether the matter at issue was indeed a subject of concern to the Committee. Could States be held to be in contravention of the Convention if their constitutions forbade them to gather demographic statistics on minorities?

44. Mr. SHAHI remarked that the proposed wording of paragraph 12 was particularly conciliatory compared to what the Committee had adopted on other occasions, besides which the Committee had not received a clear response from the Polish delegation.

45. The CHAIRMAN said that the wording proposed in the guidelines on the form and content of reports was less critical still.

46. Mr. GARVALOV asked whether the Committee could not use in paragraph 12 the wording used in the guidelines.

47. Mr. DIACONU said that paragraph 12 should be adopted as it stood.

48. The CHAIRMAN invited the Committee to consider paragraph 12 in the light of paragraph 17, which dealt with the same matter. He suggested that paragraph 17 should be retained and paragraph 12 dropped.

49. It was so decided.

Paragraph 13

50. Mr. ABOUL-NASR said he thought that the transition to a market economy affected the entire population, not just minorities.

51. Mr. SHAHI said that that had been the gist of the Polish delegation's statement. The point was to signal the difficulties attendant on transition from a centralized, totalitarian to a capitalist, i.e. market, economy.

52. The CHAIRMAN suggested that the words "to a free market" at the end of the paragraph should be deleted.

53. It was so decided.

54. Paragraph 13 was adopted as amended.

Paragraph 14

55. The CHAIRMAN wondered whether the expression "mother tongue" might not be preferable to "own language".

56. Mr. SHAHI said that the latter expression was the one that had been used in the report of Poland.

57. Paragraph 14 was adopted.

Paragraphs 15 and 16

58. Paragraphs 15 and 16 were adopted.

Paragraph 17

59. The CHAIRMAN wondered whether in the second line the words "to supply" might not be preferable to "to compile".

60. Mr. GARVALOV pointed out that the topic under consideration was the collection of demographic data in general, not merely those supplied to the Committee. In his view, therefore, the current wording was more correct.

61. Paragraph 17 was adopted.

Paragraph 18

62. The CHAIRMAN pointed out that the word "it" needed to be inserted in the third line before the word "include".

63. Paragraph 18 was adopted subject to the drafting change.

Paragraphs 19 to 23

64. Paragraphs 19 to 23 were adopted.

65. The draft concluding observations of the Committee on the thirteenth and fourteenth periodic reports of Poland were adopted, as orally amended.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Draft statement on Israel (distributed at the meeting, in English only: CERD/C/51/Misc.30/Rev.1)

66. Mr. van BOVEN reminded the Committee that his initial draft of the statement had been distributed the previous week. It had been revised to take account of Committee members' comments. Broadly speaking, it repeated what had been said in earlier statements, but was a little more explicit on the agreements between Israel and the PLO (para. 1), in condemning terrorist groups pursuant to article 4 of the Convention (para. 3), and on the notion of collective punishments, which were banned under article 33 of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War (paras. 4 and 5).

67. The CHAIRMAN invited the Committee to consider the document paragraph by paragraph.

68. It was so decided.

Paragraph 1

69. Paragraph 1 was adopted.

Paragraph 2

70. Mr. GARVALOV was not certain whether it was the Committee's business to voice concern over changes in the physical character of the occupied territories, and asked whether the words might be deleted.

71. Mr. ABOUL-NASR wished the words to be retained, emphasizing that when houses were destroyed or confiscated and when roads were built, the physical character of the occupied territories was indeed changed.

72. Mr. WOLFRUM said that "and other settlement projects" should be added after the reference to Jabal Abu Ghenaim, since to his knowledge there were others.

73. Mr. SHAHI said that, although not the only one, Jabal Abu Ghenaim deserved to be mentioned since it was the one that had led to the interruption of the peace process.

74. Mr. RECHETOV said he would prefer to use the term "physical character".

75. Mr. YUTZIS thought that the wording "que cambian el espacio geográfico y urbano y la composición social y demográfica" could be used instead, but would not insist on his suggestion.

76. Mr. ABOUL-NASR pointed out that the expression "physical character" was often used in United Nations resolutions, and its meaning was clear. He would prefer the term to be retained.

77. Mr. van BOVEN said that he, too, would like to see the term retained.

78. Paragraph 2 was adopted.

Paragraph 3

79. Mr. RECHETOV said that the first sentence should express the Committee's condemnation of "terrorism in all its forms", because terrorism could also be committed by regular forces in the service of the State.

80. After a discussion on the point, and on whether it was appropriate to emphasize that the Committee condemned all the more strongly acts of terrorism which indiscriminately cost innocent people their lives, in which Mr. RECHETOV, Mr. ABOUL-NASR, Mr. GARLAVOV, Mr. van BOVEN, Mr. de GOUTTES, Mr. WOLFRUM, Mr. YUTZIS, Mr. AHMADU and Mr. SHAHI took part, the CHAIRMAN suggested that the first sentence should be amended to make two, reading as follows: "The Committee again condemns in the strongest terms terrorism in all its forms. It abhors acts which result in the indiscriminate killing of innocent people and reiterates ...".

81. It was so decided.

82. Paragraph 3 was adopted as amended.

Paragraphs 4 and 5

83. Mr. SHAHI, drawing attention to the expression "related measures" in the first line of paragraph 4, suggested that the text should say what was actually meant: withholding - as the last sentence said - from the Palestinian authority the taxes, levies and customs duties that were its by right and that it needed. If the Committee condemned terrorism, it should also insist that the Palestinian authority must have the wherewithal to carry out its functions.

84. Mr. van BOVEN said that Mr. Shahi's point was an argument in favour of merging paragraphs 4 and 5, which would have the advantage of heightening the Committee's urgent call for the actions referred to in paragraph 4 to end.

85. Mr. ABOUL-NASR suggested incorporating the first sentence of paragraph 5 into paragraph 4 but keeping the rest of paragraph 5 separate, so that it was clear that the Committee was explicitly urging the Israeli Government to lift the sanctions in question. The last paragraph would thus begin: "The Committee holds that ...".

86. Mr. AHMADU asked whether it was really necessary to specify the "Arab" population in the second line of paragraph 5, since it was the Arab population that lived in the occupied territories.

87. Mr. van BOVEN said the distinction was important because there were also Jewish settlements in the occupied territories which were not subjected to the measures imposed on the Palestinians. There was thus discrimination against one particular group in the territories.

88. The CHAIRMAN suggested that the second sentence of paragraph 5 should be improved by replacing "amounting" with "amount" and adding "and" after "punishment".

89. Paragraphs 4 and 5 were adopted with the amendments proposed by Mr. Shahi, Mr. van Boven, Mr. Aboul-Nasr and the Chairman.

Paragraph 6

90. Mr. ABOUL-NASR, supported by Mr. AHMADU, suggested adding the words "the continuation of" after the word "welcomes", to indicate the Committee's desire that the dialogue should continue.

91. Paragraph 6 was adopted as amended.

92. The draft declaration on Israel was adopted as orally amended.

Draft statement on Bosnia and Herzegovina (distributed at the meeting, in English only: CERD/C/51/Misc.37)

93. The CHAIRMAN invited the Committee to examine the text paragraph by paragraph.

Paragraph 1

94. Mr. WOLFRUM pointed out that the proper name of the Committee was "The Committee on the Elimination of Racial Discrimination".

95. Paragraph 1 was adopted subject to the drafting change.

Paragraph 2

96. Mr. GARVALOV suggested that "contrary to" on the penultimate line should be preceded by "which is".

97. Mr. DIACONU felt that the word "borders", which conveyed a specific notion in international law, might be out of place in the setting of Bosnia and Herzegovina.

98. Mr. WOLFRUM thought that "internal borders" might suit, but it would be best to see what expression had been used in the annex to the Dayton Agreement.

99. Paragraph 2 was adopted as amended, on the understanding that the expression used in the Dayton Agreement to refer to internal boundaries would be duly checked.

Paragraph 3

100. Mr. WOLFRUM said that the expression "both entities" suggested that there were only two entities in Bosnia and Herzegovina.

101. Mr. van BOVEN agreed that it would be preferable to speak of the "two main entities".

102. Paragraph 3 was adopted as amended.

Paragraph 4

103. The CHAIRMAN suggested replacing "is made" in the first line by "is being made".

104. Mr. ABOUL-NASR asked whether the parties' obligations under the Agreement, as referred to in the second sentence, were also obligations on countries maintaining a military presence.

105. Mr. van BOVEN said that only the parties to the Agreement were concerned, among them the Republika Srpska.

106. Paragraph 4 was adopted as corrected by the Chairman.

Paragraph 5

107. Paragraph 5 was adopted.

108. Mr. YUTZIS said he had gone along with the general opinion but wished to state, as he had several times before, that the reference to the Dayton Agreement seemed to him to be out of place because that Agreement was partly to blame for the problem.

109. The draft statement on Bosnia and Herzegovina was adopted as orally amended.

The meeting rose at 6 p.m.